

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

FRANK S. KULA,

Plaintiff,

v.

Civil Action No. 3:07cv114

THE UNITED STATES,

Defendant.

ORDER

Pending before the Court is the September 30, 2008, Report and Recommendation, filed by Magistrate Judge James E. Seibert, wherein the parties were directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. Plaintiff filed his objections to the Magistrate Judge's Report and Recommendation on October 6, 2008.

In his Complaint, Plaintiff alleges, "Conspiracy in this District. Unconstitutional compact between States. Delay is frivolous, absent imminent danger." Upon examination of the Complaint, the Defendant's Motion to Dismiss, and the report from the Magistrate Judge, it appears to the Court that the issues raised by both parties were thoroughly considered by Magistrate Judge Seibert in his Report and Recommendation.

Moreover, the Court, upon an independent de novo consideration of all matters now before it, is of the opinion that the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. Upon review of the Plaintiff's objections, the Court finds that the Plaintiff has not raised any issues that would save his Complaint from dismissal and that have not already been fully considered by Magistrate Judge Seibert. As more fully set forth in Magistrate Judge Seibert's Report and

Recommendation, the Court finds that the Plaintiff has not met his burden of setting forth a question of federal law, thus resulting in a lack of subject matter jurisdiction, and that the Plaintiff has failed to state a claim upon which relief can be granted. Therefore, it is

ORDERED that Magistrate Judge Seibert's Report and Recommendation be, and the same hereby is, accepted in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that, pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, Defendant's Motion to Dismiss shall be, and the same hereby is, **GRANTED**. It is further

ORDERED that this civil action shall be, and the same hereby is, **DISMISSED** and **STRICKEN** from the docket of this Court. It is further

ORDERED that the Clerk shall enter judgment for the Defendant. It is further

ORDERED that, in light of the Court's dismissal of this civil action, Plaintiff's Petition for Writ of Mandamus, which requests the Court to compel the United States Attorney General to intervene on Plaintiff's behalf in this civil action, shall be, and the same hereby is, **DENIED**. It is further

ORDERED that, if a party should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, Plaintiff may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed in forma pauperis from the United States Court of Appeals for the Fourth Circuit.

ENTER: January 28, 2009



United States District Judge